

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010110153

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 29, 2010 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Torrance Unified School District (District).

On November 12, 2010, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup> The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

In the instant case, the District contends that Student’s complaint fails to provide it with sufficient facts that would enable it to understand the nature of Student’s alleged problems and that there is insufficient nexus between Student’s proposed resolutions and the issues raised in his complaint. The District’s arguments are not persuasive. The issues raised in Student’s complaint are sufficiently identified and supported by extensive factual information to permit the District to respond to the complaint and participate in a resolution session and mediation.

The District initially challenges the sufficiency of Student’s complaint because it indicates that although Student lives within the boundaries of the District, his school of attendance is the “Riviera Elementary School District.” The District asserts that Student was required to allege facts explaining why he is attending school outside of the District. The District provides no basis for this contention. Assuming that Student was presently attending school in a different district and the reference in the complaint was not simply an error of wording,<sup>8</sup> this fact would not cause Student’s complaint to be insufficient. Rather, his

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

<sup>8</sup> Riviera Elementary School is a school within the Torrance Unified School District.

attendance in another school district might affect the duration of the District's obligation to educate Student or the extent of remedies ordered if Student prevails at hearing.

In issue one, Student alleges that the District failed to provide him with a free appropriate public education (FAPE) during the two years prior to the filing of his complaint because it failed to provide a placement and supporting services that would address Student's behavioral issues and by failing to provide an effective behavior support plan. The District makes no specific allegations that Student's issue one is insufficient. The issue provides specific information and background facts in support of the allegations and is sufficient as pled.

In issue two, Student alleges that the District failed to provide him with an independent functional behavioral assessment (FBA) after his parents requested it on two separate occasions, first on March 10, 2009, and secondly after the District had completed its own FBA. The District asserts this issue is insufficient because Student fails to allege that at the time of parents' request for the independent FBA on March 10, 2009, the District had completed an FBA with which Student disagreed. However, the issue of whether the District had an obligation to provide the independent FBA (or file for due process if it declined to provide it) at the time of parents' request is an affirmative defense to Student's allegation. That Student does not allege this fact in his complaint does not result in the allegation being insufficiently pled.

Student alleges in issue three that the District's FBA was invalid because it did not take into account his diagnosis of autism. The District does not contend that this issue is insufficiently pled.

In issue four (incorrectly referenced as issue three in the District's NOI), Student alleges that the District failed to complete the process of referring him to the department of mental health for an assessment beginning with his individualized education program (IEP) dated December 8, 2008. The District contends that issue four is insufficiently pled because Student fails to allege that his parents signed consent to the referrals. Again the District alleges what amounts to an affirmative defense to Student's allegations as a basis for its NOI. The issue presented is clear and contains all necessary elements to put the District on notice of the contours of Student's allegation. It will be Student's burden at hearing to prove that the District was under an obligation to refer him for a mental health assessment. That Student's parents did not give written consent for the referral is an affirmative defense that the District may raise at hearing.

In issue five, Student alleges that the District violated his rights to a FAPE because it failed to review and revise his IEP's during the two years prior to the filing of Student's complaint. The District contends that this issue is insufficiently pled because it contradicts the allegations and facts of issue one where Student states that the District convened many IEP's for him and made changes to those IEP's over the course of the time period at issue. The District however does not provide any authority for its position that a complaint is insufficient because a student raises contradictory or alternative causes of action. The issue

itself clearly states the basis and factual background of the allegations made. It will be Student's burden at hearing to prove whether those allegations are true, and, if so, if his right to a FAPE were violated.

Finally, the District asserts that Student's complaint is insufficient because there is no nexus between the allegations and some of Student's proposed resolutions. However, the only requirement regarding proposed resolutions is that they be included in a complaint. There is no requirement that a party plead in a complaint the appropriateness or viability of a proposed resolution. Rather, it will be Student's burden at hearing to not only prove the allegations in his complaint but to also prove that any requested remedies are necessary and appropriate in light of Student's present circumstances. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time he filed his complaint.

#### ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 15, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings